

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION

In the Matter of the Application of
Minnegasco for a Certificate of Need for
a Large Liquefied Gas Storage Facility

**FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND RECOMMENDATION**

The above-entitled matter came on for hearing before Steve M. Mihalchick, Administrative Law Judge, on March 26 and 27, 1996, in Alexandria, Minnesota. The record was closed on May 1, 1996, upon receipt of the final briefs.

Appearances:

For Minnegasco: Paul T. Ruxin, Jones, Day, Reavis & Poque, 901 Lakeside Avenue, North Point, Cleveland, OH 44114, and Brenda A. Bjorklund, Minnegasco, 800 LaSalle Avenue, FI 11, P.O. Box 59038, Minneapolis, MN 55459-0038.

For the Minnesota Propane Gas Association: Laurance R. Waldoch, Lindquist & Vennum, 4200 IDS Center, 80 South Eighth St., Minneapolis, MN 55402-2205.

For East 27 Homeowners: Amy Townsdin, 4208 Heritage Lane N.E., Alexandria, MN 56308 and Chuck Wiener, 319 E. Lake Geneva Road No., Alexandria, MN 56308.

For the Department of Public Service: Julia E. Anderson, Assistant Attorney General, 1200 NCL Tower, 445 Minnesota St., St. Paul, MN 55101-2130.

For Commission Staff: David Jacobson and Jerry Dasinger, Minnesota Public Utilities Commission, 121 7th Place East, Suite 350, St. Paul, MN 55101-2116.

NOTICE

Notice is hereby given that, pursuant to Minn. Stat. § 14.61, and the Rules of Practice of the Public Utilities Commission and the Office of Administrative Hearings, exceptions to this Report, if any, by any party adversely affected must be filed within 20 days of the mailing date hereof with the Executive Secretary, Minnesota Public Utilities Commission, 350 Metro Square, 121 7th Place East, St. Paul, Minnesota 55101. Exceptions must be specific and stated and numbered separately. Proposed Findings of Fact, Conclusions and Order should be included, and copies thereof shall be served upon all parties. If desired, a reply to exceptions may be filed and served within ten days after the service of the exceptions to which reply is made. Oral argument before a

majority of the Commission will be permitted to all parties adversely affected by the Administrative Law Judge's recommendation who request such argument. Such request must accompany the filed exceptions or reply, and an original and 15 copies of each document should be filed with the Commission.

The Minnesota Public Utilities Commission will make the final determination of the matter after the expiration of the period for filing exceptions as set forth above, or after oral argument, if such is requested and had in the matter.

Further notice is hereby given that the Commission may, at its own discretion, accept or reject the Administrative Law Judge's recommendation and that this recommendation has no legal effect unless expressly adopted by the Commission as its final order.

STATEMENT OF ISSUES

The general issue in this case is whether Minnegasco has satisfied the statutory and rule requirements and justified the need for a large liquefied gas storage facility at a proposed site near Alexandria, Minnesota. More specifically, the following issues have been contested in this proceeding:

1. Whether the "construction" alternative was adequately considered in light of possible pipeline expansion.
2. Whether safety of nearby residents should be and was adequately considered in evaluating the proposed and alternative sites.
3. Whether there is an economic impact upon the residential neighborhood adjacent to the proposed site, and if so, whether that impact should be considered in evaluating the proposed and alternative sites.

Based upon the record herein the Administrative Law Judge makes the following:

FINDINGS OF FACT

PROCEDURAL HISTORY, THE PARTIES, AND THE SERVICE AREA

1. This proceeding was initiated by Minnegasco, a division of NorAm Energy Corp. (Minnegasco or the Company), on December 4, 1995, by the filing of its Application, MGC Exs. 1 and 2, for a certificate of need to construct, own, and operate a 7,000 Mcf/day propane-air, peak-shaving facility (the proposed facility) at a specific site (the Proposed Site) near Alexandria, Minnesota.

2. Minnegasco is a public utility engaged in the business of providing natural gas to retail customers in approximately 200 Minnesota communities. MGC Ex. 2 at B-2 (Application). Northern Natural Gas Company (Northern) is Minnegasco's primary supplier of pipeline transportation services. Northern provides about 90 percent of the Company's total gas transportation. *Id.*

3. As shown in MGC Ex. 2 at Ex. H-1, Northern provides Minnegasco with transportation service to communities in west central Minnesota through the "Benson branchline". The Benson branchline departs from Northern's mainline, which runs north and south through the eastern part of the state, at North Branch, Minnesota, and goes

east through Cambridge to St. Cloud, then north to Pierz, then west and southwest through Little Falls, Long Prairie, Alexandria, Morris and Benson, Minnesota. There is also a branch from Pierz that continues north to Brainerd and communities northeast of there.

4. The portion of the Northern pipeline system specifically involved in this proceeding is that portion starting at Pierz and running downstream to Benson. It includes 18 communities presently served by Minnegasco starting at Little Falls and ending at Benson and including Alexandria in approximately the middle. Even though it includes Little Falls, it has generally been referred to in these proceedings as the "Benson branchline downstream of Little Falls." It has also been referred to as the "Alexandria branchline" by Northern. MGC Ex. 2 at Ex. G-7. The area of west central Minnesota in which the Benson branchline downstream of Little Falls runs, and in which the 18 communities are located, has been referred to in this proceeding as the "Alexandria area". This has been somewhat confusing, because the term "Alexandria area" is used by many people to identify the City of Alexandria and surrounding communities, a much smaller area than that referred to in this proceeding.

5. The 18 cities served by Minnegasco along the branchline from Little Falls to Benson are served through Minnegasco's local gas distribution systems which are connected to the branchline through town border stations (TBS's). There is a TBS at Alexandria that serves the City of Alexandria and surrounding communities. MGC Ex. 15 (Alexandria Distribution System Map).

6. Northern transports natural gas to the Benson branchline downstream of Little Falls primarily from the south end of its mainline, which enters Minnesota from the south, roughly following Interstate 35. MGC Ex. 2 at Ex. G-13 and Ex. H-1. As will be discussed later, Northern can also deliver gas from the northern end of its mainline at Carlton, Minnesota, where it connects with another pipeline from the northeast. In addition, Northern has a connection to the Viking pipeline, which comes into Minnesota from the northwest and connects with the Benson branchline near Pierz. That connection is not used at the present time to supply natural gas to the Benson branchline downstream of Little Falls. MGC Ex. 2 at G-14 and Ex. H-1.

7. Minnegasco is Northern's only customer on the Benson branchline downstream of Little Falls. However, upstream of Little Falls, Northern has other customers, most notably NSP at St. Cloud. MGC Ex. 2 at B-4; Tr. 210-215.

8. On December 22, 1995, the Commission accepted Minnegasco's Application as substantially complete. Order Accepting Application dated December 22, 1995. As part of its Application, Minnegasco proposed to build a 7,000 Mcf/day propane-air, peak-shaving facility that would include twelve 30,000 gallon propane storage tanks. The proposed storage would constitute a "large energy facility" under Minn. Stat. § 216B.2421, subd. 2(e). Therefore, Minnegasco is required to obtain a certificate of need under Minn. Stat. § 216B.243 before siting or constructing the proposed facility. Id.

9. A prehearing conference was held January 16, 1996. The following participants appeared at the prehearing conference, moved to intervene in the case and

were granted party status: the Department of Public Service (DPS), the Minnesota Propane Gas Association (MPGA), and the East 27 Homeowners (Homeowners). Prehearing Order dated January 24, 1996.

10. The MPGA stated that it is an association of propane dealers, that it and its members have a direct and substantial financial interest in the proceeding as gas customers and as competitors of Minnegasco, and that it would present testimony to challenge the contention of Minnegasco that the proposed facility is necessary, that a more reasonable and prudent alternative is not available, and that the consequences of granting the certificate of need are more favorable than the consequences of denial. Petition to Intervene of the Minnesota Propane Gas Association. Eventually, the MPGA decided not to present its own testimony, but did cross examine witnesses at the hearings and submitted briefs and proposed findings.

11. Homeowners is a group of persons consisting of and representing owners of homes in Heritage Addition, a housing development located just to the north of the Proposed Site, and other homeowners to the west and south of the proposed Site. The homes are located on or near Lake Geneva and Lake Victoria. They believe that locating the facility at the Proposed Site would create safety hazards and decrease the value of their homes. East 27 Homeowners Petition to Intervene. It is unclear how many of the nearby property owners are represented by Homeowners, but a petition included with the Homeowners' direct testimony, Homeowners Ex. 19 at 49-51, includes the signatures of the owners of 41 of the homes in the Heritage Addition, which is a substantial majority of the property owners. It also includes the signatures of the owners of one of the homes on Freedom Road, which is located to the west and northwest of the proposed site where there are several residences, and two couples owning homes south of Highway 27 where there are a few homes. See Homeowners Exs. 17 and 23 and MGC Ex. 2 at Ex. G-11.

12. Minnegasco proposes to locate the propane storage tanks very near the center of the Proposed Site. MGC Ex. 2 at Ex. K-2 (Landscape Plan). At that location, the homes in the Heritage Addition will be from about 900 to 3,000 feet from the propane storage tanks, the homes on Freedom Road will be from about 500 to 1,500 feet from the tanks, and the homes to the south of Highway 27 will be from about 400 to 2,500 feet from the tanks. See Homeowners Ex. 23 and MGC Ex. 2 at Ex. G-11.

13. On February 20, 1996, the Commission approved Minnegasco's proposed text of the public and evidentiary hearing notice, a list of newspapers and proposed public dates. Order dated February 23, 1996. Notices of the public and evidentiary hearings were published as follows:

<u>Newspaper</u>	<u>Date</u>
Star Tribune	3/13/96
Pioneer Press	3/13/96
Glenwood Pope County Tribune	3/11/96
Osakis Review	3/12/96

Starbuck Times

3/12/96

Alexandria Echo

3/13/96

MGC Ex. 5.

14. Public hearings were held at 3:00 p.m. and 6:30 p.m. on March 26, 1996, in Alexandria, Minnesota. The evidentiary hearing also took place in Alexandria on March 26, 1996, and continued through March 27, 1996. The public and evidentiary hearings were delayed one day due to inclement weather.

15. Written comments from the public were due April 1, 1996. Twelve public comments were received, some of which were duplicates of documents presented at the hearings. The public comments were representative of the various positions expressed at the hearing. Several persons, businesses and organizations, none of whom are located in the immediate area of the Proposed Site, supported the need for a peak-shaving plant, usually at the Proposed Site, because of the cheaper energy source of natural gas it would provide, thus reducing energy bills and fostering economic development. Other letters, particularly from persons living in the immediate area of the Proposed Site, expressed concern about the potential for damage around the Proposed Site should an accident occur.

DESCRIPTION OF PROPOSED FACILITY.

16. Minnegasco proposes to construct, own, and operate a 7,000 thousand-cubic-feet-per-day (Mcf/day) propane-air peak-shaving facility near the city of Alexandria, Minnesota. The purpose of the proposed facility is to enable Minnegasco to mix a blend of propane and air with natural gas in order to supply a portion of the gas requirements when delivery of natural gas from the pipeline is insufficient to meet firm customers' needs during periods of high ("peak") demand. The Company expects to operate the facility an average of nine days per year. MGC Ex. 2 at A-1, I-1 (Application). The proposed facility would be substantially inactive throughout the rest of the year during which time it would be acting as a propane storage facility. MGC Ex. 2 at I-1 (Application).

17. Minnegasco desires to construct the proposed facility on the Proposed Site, which is located on the northwest corner of the intersection of Highway No. 27 and Lake Geneva Road^[1] in Alexandria Township, Douglas County. The site is one-half mile east of the border of the City of Alexandria, Minnesota. The Proposed Site is 16.5 acres. The facility itself will occupy about two acres; the remaining acreage will be used as a "green zone" to buffer the facility from the surrounding area. MGC Ex. 2 at A-2 (Application).

18. Minnegasco's proposed facility will consist of several small buildings, twelve 30,000 gallon propane storage tanks, each about 9 feet in diameter and 65 feet long, and a truck-unloading station. The buildings will include a compressor building, blender building, and two pump houses. MGC Ex. 2 at I-4 (Application); DPS Ex. 24 at 3 (Kosowski Dir.).

19. The proposed facility will be unmanned. Minnegasco will operate the proposed facility using an on-site computer which will be monitored continuously and simultaneously from two separate locations. The computer will be connected by telephone line to Dakota Station, Minnegasco's liquefied natural gas facility and largest propane-air peak-shaving facility, located in Burnsville in Dakota County, Minnesota. A second telephone line will connect the storage facility to Minnegasco's Throughput Management dispatch office in Minneapolis. Minnegasco personnel staff both of these locations 24 hours each day and will have the ability to initiate the facility's Emergency Shutdown System and to communicate with other employees or officials in and around the Alexandria area as necessary and appropriate by telephone. MGC Ex. 2 at A-2 and K-5 (Application); DPS Ex. 24 at 4-5 (Kosowski Dir.).

20. On those occasions when it is necessary, the peak-shaving facility will generally operate by withdrawing liquid propane from the on-site storage tanks and raising its pressure. At the vaporizer, located between the compressor and blender buildings, the liquid propane will be heated, converting it to gaseous form. Simultaneously, a compressor (in the compressor building) will raise the pressure of air in a tank to a pressure greater than that in the natural gas distribution system. In the blender building, the propane gas will be mixed with the compressed air to produce a propane-air mixture. The propane-air mixture will then be injected into the natural gas distribution system. In doing so, the propane-air to natural gas ratio will not be allowed to exceed 55/45 to ensure that the mixture retains basic properties similar to natural gas so that it can be used to fuel furnaces and other appliances designed for natural gas. MGC Ex. 2 at A-2 (Application).

21. The proposed facility will provide additional seasonal capacity on a constrained section of Minnegasco's gas distribution system, allowing Minnegasco to meet growing customer requirements, both in the constrained section and elsewhere on the Company's system. Upon integration of the proposed facility into Minnegasco's existing facilities, capacity on Minnegasco's system as a whole will increase. MGC Ex. 2 at B-4 through B-8 (Application); DPS Ex. 26 at 12-13 (Chavez).

22. The cost of the proposed facility at the Proposed Site is estimated to be as follows:

Initial Construction.....	\$1,200,000
Annual Maintenance.....	20,400
Annual Operating Expenses.....	38,900
Annual Property Taxes.....	57,000

MGC Ex. 2 at A-3 (Application).

23. In addition to obtaining a certificate of need from the Commission, Minnegasco must obtain approval from the following governmental entities. Douglas County (conditional use permit is approved for proposed site although the approval is currently on appeal through the court system.^[2]); Minnesota Department of Health (water well permit request not yet filed); Minnesota Department of Transportation

(access driveway or entrance permit request not yet filed); Minnesota State Fire Marshal (plan review approved, facility approval pending); and the Minnesota Pollution Control Agency (Environmental Assessment Worksheet approved, determined no requirement for environmental impact statement). MGC Ex. 2 at Table A-1 (Application); DPS Ex. 24 at 7, SK-4 (Kosowski Dir.); MGC Ex. 30 (MPCA Notice).

APPLICABLE STATUTORY AND RULE CRITERIA.

24. Minn. Stat. § 216B.243 prohibits siting or constructing a large energy facility in Minnesota without first obtaining a certificate of need from the Commission. Minn. Stat. § 216B.243 and Minn. R. 7851.0010 through 7851.0400 set forth the criteria which must be met to establish need for proposed large energy facilities. Minn. Stat. § 216B.243, subd. 3, requires that the Commission evaluate the following factors in assessing whether the applicant has justified the need for a proposed facility:

(1) The accuracy of the long-range energy demand forecasts on which the necessity for the facility is based;

(2) the effect of existing or possible energy conservation programs under sections 216C.05 to 216C.30 and this section or other federal or state legislation on long-term energy demand;

(3) the relationship of the proposed facility to overall state energy needs, as described in the most recent state energy policy and conservation report prepared under section 216C.18;

(4) promotional activities that may have given rise to the demand for this facility;

(5) socially beneficial uses of the output of this facility, including its uses to protect or enhance environmental quality;

(6) the effects of the facility in inducing future development;

(7) possible alternatives for satisfying the energy demand including, but not limited to, potential for increased efficiency of existing energy generation facilities;

(8) the policies, rules and regulations of other state and federal agencies and local governments; and

(9) any feasible combination of energy conservation improvements, required under section 216B.241, that can (i) replace part or all of the energy to be provided by the proposed facility, and (ii) compete with it economically.

25. Minn. R. 7851.0120, provides:

A certificate of need shall be granted to the applicant if it is determined that:

A. The probable result of denial would adversely effect the future adequacy, reliability, or efficiency of energy supply to the applicant, to the applicant's customers, or to the people of Minnesota and neighboring states, considering:

(1) The accuracy of the applicant's forecast of demand for the type of energy that would be supplied by the proposed facility;

(2) The effects of the applicant's existing or expected conservation programs and state and federal conservation programs;

(3) The effects of promotional practices of the applicant that may have given rise to the increase in the energy demand, particularly promotional practices that have occurred since 1974;

(4) The ability of current facilities and planned facilities not requiring certificates of need to meet the future demand; and

(5) The effect of the proposed facility, or a suitable modification of it, in making efficient use of resources.

B. A more reasonable and prudent alternative to the proposed facility has not been demonstrated by a preponderance of the evidence on the record, by parties or persons other than the applicant, considering:

(1) The appropriateness of the size, the type, and the timing of the proposed facility compared to those of reasonable alternatives;

(2) The cost of the proposed facility and the cost of energy to be supplied by the proposed facility compared to the costs of reasonable alternatives and the cost of energy that would be supplied by reasonable alternatives;

(3) The effects of the proposed facility upon the natural and socioeconomic environments compared to the effects of reasonable alternatives; and

(4) The expected reliability of the proposed facility compared to the expected reliability of reasonable alternatives.

C. The consequences to society of granting the certificate of need are more favorable than the consequences of denying the certificate, considering:

(1) The relationship of the proposed facility, or a suitable modification of it, to overall state energy needs;

(2) The effects of the proposed facility, or a suitable modification of it, upon the natural and socioeconomic environments compared to the effects of not building the facility;

(3) The effects of the proposed facility, or a suitable modification of it, in inducing future development; and

(4) The socially beneficial uses of the output of the proposed facility, or a suitable modification of it, including its uses to protect or enhance environmental quality.

D. It has not been demonstrated on the record that the design, construction, or operation of the proposed facility, will fail to comply with relevant policies, rules, and regulations of other state and federal agencies and local governments.

26. Minn. R. 7851.0290 states:

The applicant shall provide information pertaining to possible alternatives in the following format:

- A. a description of the alternative, including its capacity and economic life; and
- B. a cost/benefit analysis, comparing investment costs, annual operating and maintenance costs, environmental effects, safety and reliability aspects, and energy requirements of each alternative with those of the proposed facility.

27. Minn. R. 7851.0330 allows Minnegasco to satisfy the filing requirements regarding environmental information set forth in Minn. R. 7851.0340 to 7851.0370 by filing an environmental assessment worksheet (EAW), if the Minnesota Environmental Quality Board (MEQB) determines that an EAW is sufficient to meet the MEQB's requirements.

SATISFACTION OF MINN. RULE 7851.0120 CRITERIA.

Adequacy And Reliability Of Natural Gas Supplies To Minnegasco And Its Customers.

1. Minnegasco Forecasts

1. Minnegasco claims that denial of the requested certificate of need will adversely affect both the future adequacy of natural gas supplies to Minnegasco and its customers and Minnegasco's ability to reliably serve its customers in the Alexandria area because its system there is constrained. MGC Ex. 2 at B-4 through B-8, Tab E and Tab F. DPS agrees. DPS Ex. 26 at 13 (Chavez).

2. "Adequacy" in this case refers to the ability of Minnegasco to reliably provide natural gas supplies to satisfy the design-day requirements of its firm customers. A design-day is defined as a 24-hour period during the coldest periods of the year with the greatest possible gas requirements to meet firm customers' needs. DPS Ex. 26 at 3 (Chavez).

3. "Reliability" refers to the ability of the Company to provide natural gas supplies to satisfy the needs of its firm customers during periods of the greatest possible demand. DPS Ex. 26 at 13 (Chavez).

4. "Capacity constrained" refers to a pipeline's design and construction regarding the specific amount of gas it is able to carry and deliver. When the amount of designed capacity is fully contracted, it is considered capacity constrained. DPS Ex. 26 at 14 (Chavez).

5. Minnegasco has shown that the proposed facility is necessary to meet current and future demand both system-wide and in the Alexandria area where pipeline capacity to deliver natural gas is constrained. Again, the Alexandria area includes the eighteen communities on Northern's Benson branchline downstream of Little Falls. MGC Ex. 2 at B-4 through B-8, Tab E and Tab F (Application); DPS Ex. 26 at 4-13 (Chavez).

6. The Benson branchline is the only portion of Minnegasco's system served by Northern that is capacity constrained. This area is the only branchline on Minnegasco's system that was curtailed by Northern during the 1993/1994 heating season. The curtailments required that gas use on that line be restricted so as to serve only the contract amount of firm capacity at each of the TBS's. On February 1, 1996, (a record-setting cold day in Minnesota) Minnegasco's actual firm peak-day sendout to the eighteen towns identified as the Alexandria area exceeded the Company's TBS firm entitlement. MGC Ex. 2 at B-4 and B-8 (Application); DPS Ex. 26 at 14-15 and VCC-9 (Chavez).

7. The additional capacity provided by the proposed facility will improve the adequacy and reliability of gas supplies to Minnegasco's system because it will provide firm service to customers in the capacity constrained Alexandria area during peak periods, while freeing up firm capacity previously contracted from Northern to be used elsewhere on Minnegasco's system. The proposed facility will help Minnegasco reliably serve the increasing needs of its customers without creating surplus capacity or jeopardizing reliability of service in the Alexandria area. MGC Ex. 2 at B-4 through B-8, Tab E and Tab F (Application); DPS Ex. 26 at 12-18 (Chavez).

2. *Accuracy of forecasts: system-wide forecasted demand.*

1. Minnegasco's forecast of its 1995/1996 system-wide firm design-day requirements is accurate, reasonable, and consistent, as required by Minn. R. 7851.0270, subp. 4. The design-day model used to project the 1995/1996 requirements passes the standard tests of statistical significance and can be relied on to produce reasonable forecasts for the purposes of this proceeding. DPS Ex. 26 at 6-7 (Chavez).

2. The Company's 1995/96 firm design-day requirements are reasonable for use in this proceeding because they do not overstate the system-wide need for additional capacity during the coldest periods of the year and because the stated requirements are below the historic five-year design-day average requirements of 1.7664 Mcf/day that were previously determined reasonable by the Commission in the Company's previous demand entitlement filings. (Reference Docket Nos. G008/M-93-866, G008/M-94-978, G008/M-94-1234.). DPS Ex. 26 at 6 (Chavez).

3. Minnegasco's projected system-wide design-day firm peak-day demand requirements from 1997 through the year 2000 are accurate, reasonable, and consistent as well. The projections were appropriately developed by using the 1995/96 design-day requirements as a starting point and annually increasing the requirement by the total annual firm energy sales growth rate. The Company's design-day per customer requirements for this period are below the historic five-year design-day average requirements of 1.7664 Mcf/day that were previously determined reasonable by the Commission in the Company's previous demand entitlement filings. These projected firm design-day requirements provide insight regarding the need for future demand entitlement needs and are reasonable for use in this proceeding. DPS Ex. 26 at 6-7 (Chavez).

4. The methodology used by Minnegasco to develop the firm customer counts and firm energy sales, which are ultimately used to develop the firm design-day

requirements, is reasonable. Specifically, it is reasonable to use Minnegasco's forecast of total firm customers in projecting the 1995/1996 firm design-day requirements and it is reasonable to use the forecasted total annual firm energy sales (and related growth rate) as filed in Minnegasco's application in projecting its firm design-day requirements to the year 2000. DPS Ex. 26 at 7 (Chavez).

5. The Company's system-wide firm design-day forecast shows that the proposed facility is needed to service current peak-day needs without creating surplus capacity. That is, there is a need for additional firm capacity in the very near future. As shown in DPS Ex. 26 (VCC-3), column (8), Minnegasco will need to obtain 23,136 Mcf/day for the 1996/97 heating season (and 28,789 Mcf/day for the 1997-98 heating season) of additional firm entitlements (including peak shaving) to meet design-day requirements and to maintain the Commission-approved five percent reserve margin. (Reference Docket No. G008/M-91-482). MGC Ex. 2 at Tab E and Tab F (Application); DPS Ex. 26 at 8 (Chavez).

3. *Accuracy of forecast: Alexandria-area forecasted demand.*

1. Minnegasco's projections of its Alexandria-area firm design-day requirements are accurate, reasonable, and consistent. The projections are reasonable for use in this proceeding since they do not overstate the local need for additional capacity during the coldest periods of the year. The Company's model projects design-day per customer requirements of 1.65 Mcf/day which is below the historic five-year system-wide design-day average requirements of 1.7664 Mcf/day that were previously determined reasonable by the Commission in the Company's previous demand entitlement filings. DPS Ex. 26 at 9 (Chavez).

2. The models used by Minnegasco to produce the Alexandria area firm customer counts, that are ultimately used to develop future firm design-day requirements, are reasonable. DPS Ex. 26 at 9-10 (Chavez).

3. The proposed facility is needed to meet current design-day needs in the Alexandria area. During the 1995-96 heating season, Minnegasco is operating with a negative reserve margin of 2.84 percent in the Alexandria area as shown in DPS Ex. 26 (VCC-5), column (10). This indicates that additional capacity is needed to ensure reliable service to current customers during the coldest periods of the year. Therefore, based on the forecasted increase of firm customers and the increase of firm design-day requirements for all customers, there is an immediate need for additional firm capacity if Minnegasco is to continue providing reliable service to its customers in the Alexandria area on the Benson branchline downstream from Little Falls. MGC Ex. 2 at Tab E and Tab F (Application); DPS Ex. 26 at 12 (Chavez).

4. Effects of conservation programs. Conservation will not alleviate the need for additional capacity on the Benson branchline downstream of Little Falls. MGC Ex. 2 at G-6 through G-12 (Application); DPS Ex. 24 at 14 (Kosowski Dir.).

4. *Effects of promotional activities.*

1. Minnegasco has not engaged in promotional activities that gave rise to the need for the requested peaking facility. In fact, due to pipeline capacity constraints, Minnegasco's policy, beginning in April 1995, was to not extend service to customers in the Alexandria area who required main extensions. The constraint on the Benson branchline downstream of Little Falls is the primary impediment to providing natural gas service in the Alexandria area and, therefore, is the principal reason for the proposed facility. MGC Ex. 2 at B-6, B-8 and Ex. G-5 (Application); DPS Ex. 26 at 10-12 (Chavez).

2. Minnegasco has acted in an appropriate manner by restricting the addition of new customers to those it believes that it can reliably serve given its current level of entitlement. Minnegasco is not inappropriately encouraging natural gas consumption in the Alexandria area. The Company's marketing activities have been limited to competing with other energy suppliers for new customers and have not involved the promotion of excessive use of consumption of natural gas. MGC Ex. 2 at Ex. G-5 and C-3 (Application); DPS Ex. 26 at 11 (Chavez).

3. Much of the public demand for additional capacity is the result of individuals and businesses being unable to obtain the natural gas service they desire while their nearby neighbors have it. See, for example, public comment letter of Jim and LaVerna Kaufman.

5. *Ability of current facilities to meet future demand.*

1. There are no current or planned options that will provide the additional capacity needed in the Alexandria-area for reliable service at a more cost-efficient manner than the proposed facility. Minnegasco projects reasonable firm design-day requirements for the Alexandria area and its system which demonstrate that additional capacity is needed. Without additional capacity, reliability of service in the Alexandria area may be in jeopardy. DPS Ex. 26 at 30 (Chavez).

6. *Efficiency of natural gas supplies to Minnegasco and its customers.*

1. Minnegasco has shown that denial of the requested certificate of need will adversely affect the future efficiency of natural gas supplies to Minnegasco and its customers. This adverse effect stems from the fact that adding capacity—especially seasonal capacity as is needed here—using any one of the other identified options in the Company's application would not allow Minnegasco to provide natural gas service efficiently to its customers. MGC Ex. 2 at Tab C (Application); DPS Ex. 26 at 27-28 (Chavez).

2. "Efficiency" refers to the ability of the Company to provide natural gas service at the lowest possible cost without jeopardizing reliability. Approval of the certificate of need will improve the future efficiency of natural gas supplies for additional peak capacity to meet the needs of Minnegasco's firm customers. DPS Ex. 26 at 18 (Chavez).

3. A 7,000 Mcf/day propane-air peak-shaving facility is the most efficient means of expanding Minnegasco's capacity to meet firm customers' needs. MGC Ex. 2 at G-2 through G-5 (Application); DPS Ex. 26 at 26 (Chavez).

4. The proposed facility is the most efficient option both in terms of size of the facility (5,000 Mcf/day versus 7,000 Mcf/day of storage) and with respect to the other alternatives identified by Minnegasco: the No-Build Alternative, the Conservation Alternative, the Construction Alternative, and the liquefied natural gas (LNG) Alternative. MGC Ex. 2 at Tab G (Application); DPS Ex. 26 at 19-27 (Chavez); DPS Ex. 24 at 11-16 (Kosowski Dir.).

5. The proposed facility enhances efficient use of Minnegasco's capacity because it allows its customers to make more efficient use of its existing pipeline entitlements. Currently, Minnegasco has 7,207 Mcf/day of firm pipeline entitlements contracted specifically for delivery at the Alexandria TBS. Firm customers will be primarily served with existing pipeline entitlements throughout the entire year. The proposed facility, which will operate only during the coldest periods of the year to meet firm requirements above the contract pipeline entitlement, will allow Minnegasco to serve additional customers without adding pipeline entitlement. Thus, as customers are added, Minnegasco will be able to lower its assigned per-unit cost by spreading the cost of the existing entitlement base over a larger customer base. Minnegasco calculates that all system customers will realize net benefits of \$2.7 million over the life of the facility. Therefore, the proposed facility will allow Minnegasco to make more efficient use of its existing pipeline entitlements to the benefit of all ratepayers. MGC Ex. 2 at Ex. G-4 (Application); DPS Ex. 26 at 21 (Chavez).

6. Based on the Company's design-day requirements, Minnegasco will need the additional facility capacity of 7,000 Mcf/day within a reasonable planning horizon of 20 to 25 years. Beginning immediately upon completion of construction, Minnegasco will be able to use "freed capacity" (the current pipeline entitlements contracted for delivery to the Alexandria TBS, and not used because of the operation of the proposed facility) elsewhere throughout Minnegasco's system. Minnegasco's system will be able to use approximately 5,000 Mcf/day of capacity within two years of construction (1997), approximately 6,000 Mcf/day of capacity by 2006 and approximately 7,000 Mcf/day of capacity by 2015. MGC Ex. 2 at I-7 (Application); DPS Ex. 26 at 22-23 (Chavez).

7. The ability to use freed capacity is due to Northern's practice of allowing "zone dispatching" which permits delivery of gas supplies to alternative points within the Northern zone that are not capacity constrained without incurring penalties as long as receipts and deliveries remain in balance. Without considering zone dispatching, Minnegasco will use the 7,000 Mcf/day capacity of the proposed facility to serve customers from the Alexandria TBS by the year 2021. DPS Ex. 26 at 22-23 (Chavez).

8. Minnegasco's estimates of freed capacity are a function of the Alexandria TBS firm customer counts. The Company's projections of firm customer counts are reasonable. DPS Ex. 26 at 23 (Chavez).

9. Based on the comparative cost of a smaller sized propane-air facility, it is more cost effective to build the proposed capacity of 7,000 Mcf/day than to build a 5,000

or a 6,000 Mcf/day facility. The incremental cost difference of building a facility with an additional capacity of 1,000 Mcf/day in the 5000 to 7000 Mcf/day range is approximately \$14,000. The percentage cost difference between building a facility with 5,000 Mcf/day and 7,000 Mcf/day is approximately 2.3 percent and the percentage cost difference between building a facility with 6,000 Mcf/day and 7,000 Mcf/day is approximately 1.2 percent. MGC Ex. 2 at I-1 to I-2 (Application); DPS Ex. 26 at 24-26 (Chavez).

10. DPS claims that building the proposed facility would be more cost effective than incurring the cost of pipeline transportation capacity even without considering the added construction costs which would also be required. This is based on a DPS comparison of the one-time cost of an additional 1,000 Mcf/day of additional propane-air capacity at \$14,000, with the current annual cost of seasonal pipeline transportation capacity to deliver gas from the southern end of Minnegasco's system of approximately \$142,165. DPS Ex. 26 at 25 (Chavez). However, DPS's analysis is faulty because it assumes that the proposed facility is going to be built and that the only cost of the additional 1000 Mcf/day of the additional propane/natural gas mixture is the incremental cost of a larger peak shaving facility. If the total construction cost of \$1,200,000 for a 7000 Mcf/day facility is used, the one time cost per 1000 Mcf/day is \$171,429. That figure is larger than the current annual cost of an additional 1000 Mcf/day of seasonal pipeline transportation capacity according to Mr. Chavez's numbers. Moreover, comparing a one time construction cost to annual transportation cost is largely meaningless.

11. The initial construction cost of the proposed facility is estimated to be \$1.2 million with annual operating, maintenance and property tax costs of \$111,400. The construction of an LNG facility is the next lowest cost option with an initial cost of \$3.6 million (a differential of \$2.4 million) and an annual cost of \$150,800 (a differential of \$39,400). The stated cost of the "Conservation Alternative" in Minnegasco's application is \$8.1 million. The initial cost of the lowest-cost "Construction Alternative" is approximately \$4.4 million. The substantially higher construction costs of the LNG facility (approximately 200 percent of the cost of the proposed facility) demonstrates that the proposed facility is the most cost-effective option of providing an additional 7,000 Mcf/day capacity to Minnegasco's system and improving the reliability of the Benson branchline. MGC Ex. 2 at I-6, G-13, G-18 and G-19; DPS Ex. 26 at 26-27 (Chavez).

12. The proposed facility is the most cost-effective means of providing additional capacity to meet the needs of Minnegasco's customers system-wide and on the Benson branchline downstream of Little Falls. That is, the proposed facility allows Minnegasco the ability to provide natural gas service at the lowest possible cost while increasing reliability on the Benson branchline. MGC Ex. 2 at Tab G (Application); DPS Ex. 26 at 26-27 (Chavez).

13. With respect to that part of the system that is capacity constrained, Minnegasco is not able to maintain its system-wide reserve margin to ensure reliable service. Specifically, Minnegasco has Commission approval to maintain a system-wide reserve margin transportation of approximately five percent to ensure that it has the ability to move gas into its distribution system on the coldest winter days. This reserve margin ensures reliable service on Minnegasco's system in general. The proposed

facility will increase capacity in the constrained area so that the five percent reserve margin necessary to ensure reliability is retained. See DPS Ex. 26 at 13-14, 18 (Chavez).

Alternatives To Proposed Facility.

7. *Consideration of Alternatives by Minnegasco.*

1. Minnegasco's application includes analyses of all reasonable alternatives to the proposed facility. DPS Ex. 23 at 11-12 (Kosowski Dir.).

2. Minnegasco believes none of the alternatives to be a more reasonable and prudent alternative to the proposed facility at the Proposed Site. MGC Ex. 2 at Tab G (Application). DPS agrees. DPS Ex. 23 at 11-12 (Kosowski Dir.)

3. The following alternatives were analyzed in the record.

a. The No-Build Alternative, where Minnegasco would take no action.

b. The Conservation Alternative, where Minnegasco reduces demand for natural gas in the area to free up capacity.

c. The Construction Alternative, where Minnegasco secures new pipeline facilities constructed by Northern to supply the additional capacity needed.

d. The Liquefied Natural Gas Alternative, where Minnegasco constructs, owns, and operates an LNG storage facility in the area to provide peaking service.

e. The Alternate Site Alternatives, where Minnegasco constructs, owns, and operates a facility like the proposed facility, but sites it in different locations.

MGC Ex. 2 at G-1 (Application); DPS Ex. 23 at 11 (Kosowski Dir.).

4. The record as a whole contains substantial evidence with respect to each alternative based on safety, reliability, economic life, energy requirements, environmental impact, feasibility, and cost. MGC Ex. 2 at Tab G (Application).

8. *The No-Build Alternative.*

1. Taking no action to expand capacity, the "No-Build Alternative," is not a viable option because additional capacity is needed to adequately meet the design-day requirements of firm customers on the Benson branchline downstream of Little Falls. Without additional capacity, reliability in the Alexandria area could be in jeopardy if new customers are added. MGC Ex. 2 at G-4 through G-5 (Application); DPS Ex. 26 at 20-21 (Chavez).

2. Further, the No-Build Alternative should be dismissed because it denies potential new customers the benefits of natural gas as a fuel choice and denies all Minnegasco customers the benefits of lower gas costs through cost-effective expansion. MGC Ex. 2 at G-5 (Application).

9. *The Conservation Alternative*

1. The Conservation Alternative involves the conserving of the end-uses of the proposed facility. That is, Minnegasco would operate conservation projects to reduce demand in the area to free up capacity, thus relieving the constraint on part of its system. DPS Ex. 23 at 13 (Kosowski Dir.).

2. The Conservation Alternative is not a reasonable alternative to the proposed facility. While conservation of energy resources is clearly an important and significant function and imposes fewer environmental impacts than consumption of additional energy, conservation will not be able to alleviate the need for the additional capacity on the Benson branchline, especially in the near term. From October 1993 through September 1994, Minnegasco's conservation program reduced peak demand on the Benson branchline by about 62.7 Mcf/day. Minnegasco's projected savings for conservation program participants on the Benson branchline for 1995 - 1996 will be about 295 Mcf/day, significantly less than the 7,000 Mcf capacity provided by the proposed facility and required by customers. DPS Ex. 23 at 14 (Kosowski Dir.).

3. Minnegasco asserts that it would need to spend \$8,120,000 to produce 7,000 Mcf/day in peak-day savings along the Benson branchline. Thus, the conservation alternative is not a viable replacement for the proposed facility. MGC Ex. 2 at G-12 through G-13 (Application).

10. *The Construction Alternative.*

1. Minnegasco also considered seeking entitlements from Northern to serve the additional load to the Benson branchline downstream of Little Falls. Northern provided Minnegasco with three potential pipeline construction options that could provide 7000 Mcf/day to the Alexandria area. These include what Minnegasco has called the South-End option, the Carlton option, and the Viking option. MGC Ex. 2 at G-13 - 14 and at Ex. G-7 (Application).

2. The South-End option would deliver an additional 7000 Mcf/day from the south-end of Northern's system to the Alexandria TBS. Because Northern's system from the south is at maximum capacity, this option would require mainline expansion by the addition of an additional 300 horsepower (hp) of compression at the Farmington compressor station and one mile of additional pipeline north of the Farmington compressor station. It would also require the installation of a 700 hp compressor on the Benson branchline near Cambridge. On the Benson branchline downstream of Little Falls, it would require the installation of a 1200 hp branchline compressor near Osakis, an additional 900 hp at the existing compressor station (specific location unknown) and modifications at the Alexandria TBS of the regulator, heater and meter. MGC Ex. 2 at Ex. G-7. Minnegasco would be required to contribute a majority of the construction costs incurred by Northern for the additional capacity. Northern estimated Minnegasco's contribution to the construction cost for the South-End option at \$5,772,000. This estimate, as with all the estimates discussed here, is plus or minus thirty percent. Moreover, Northern offered to do further analysis and consideration of other options, including gaining efficiencies, if the project were included in a larger project such as Northern's Peak Day 2000. MGC Ex. 2 at G-15-16 and at Ex. G-7.

3. Under the Carlton option, Northern would deliver the additional capacity from Carlton to Alexandria. This modification, too, would require all the same modifications as the south-end option except for the modifications at Farmington. Northern estimated Minnegasco's construction contribution for this option to be \$4,775,000. As noted above, natural gas purchased from the northern end would be more expensive because of the Carlton premium. MGC Ex. 2 at G-16-17 and at Ex. G-7.

4. Under the Viking option, Northern would deliver the natural gas from the Viking pipeline interconnect near Pierz, Minnesota, to the Alexandria TBS. Since the starting point of this natural gas would be at the beginning of the Benson branchline downstream of Little Falls, the Farmington and Cambridge modifications would not be required. However, the modifications at the Alexandria TBS and the 1200 hp compressor near Osakis and the additional 900 hp compressor would still be required. In addition, another 400 hp compressor would be required at the existing interconnect site. Northern estimated Minnegasco's contribution to the construction cost for the Viking option to be \$4,376,000. MGC Ex. 2 at G-17-18 and at Ex. G-7.

5. According to Minnegasco, the Viking option poses additional supply issues for Minnegasco because capacity on the Viking pipeline is sold out. Minnegasco holds capacity on Viking and uses it to supply gas from the Viking pipeline, through the Minnesota Intrastate Pipeline Company pipeline to the Metropolitan area. Thus, Minnegasco would have to assign a portion of its Viking capacity for delivery to the Alexandria area, reducing the supply to the Metropolitan area, thereby requiring the same construction costs. This option would, according to Minnegasco, in turn require increasing the supply from Carlton or from the south-end in order to supply the Metropolitan area. Thus, Minnegasco dismissed the Viking option. MGC Ex. 2 at G-18.

6. Minnegasco asserts that all of the pipeline construction alternatives would require trenching to lay additional pipe, which could impact upon area wetlands and potential sensitive flora and fauna. In addition, they claim, the construction would create noise and dust. MGC Ex. 2 at G-15. However, as described above, according to Northern, the only pipeline construction that might be necessary would be the installation of a one mile loop north of Farmington for the south-end option. All the other construction would only be adding additional compressors or installing larger compressors. Such construction presumably occurs at a compressor site and involves little, if any, environmental impact. Moreover, an addition of a one mile loop to Northern's existing mainline is likely to have little impact on the natural environment because such construction is generally within existing right-of-way and has minimal impact. See In the Matter of the Application by Lakehead Pipeline Company, a Limited Partnership, for a for a Large Energy Facility, PUC Docket No. PL-9/CN-93-1244.

7. Minnegasco asserts that none of the construction alternatives are more reasonable or prudent than the proposed facility in light of the comparative costs. In addition to the construction costs, Minnegasco would also have to guarantee firm deliveries of the 7000 Mcf/day during the five months of the winter season. The lowest cost of the additional entitlements would be on the Viking option which would be \$491,960 annually. MGC Ex. 2 at G-15-16. The comparable annual cost of purchasing

and delivering the propane to the proposed facility does not appear in the record. Nonetheless, Minnegasco's financial projections appear reasonably accurate. While the projected costs from Northern were rough estimates subject to a thirty percent variance, and while Northern invited Minnegasco to participate in its Peak Day 2000 Project to find "creative solutions", which Minnegasco has so far declined, the initial costs of the pipeline construction alternatives are so far in excess of the construction cost of the proposed facility that it must be found that none of the three pipeline construction alternatives are more reasonable or prudent than the proposed facility. For Example, the initial lowest-cost pipeline construction option (the Viking option) would cost significantly more than the proposed facility: it would provide the same 7000 Mcf/day at almost four times the cost. MGC Ex. 2 at G-13 through G-18 (Application); DPS Ex. 26 at 26 (Chavez).

11. The LNG Alternative.

1. Under the Liquefied Natural Gas (LNG) alternative, Minnegasco would construct an LNG peak-shaving facility in the Alexandria area to provide peaking needs. MGC Ex. 2 at G-18 through G-20 (Application). DPS Ex. 23 at 15 (Kosowski Dir.); DPS Ex. 26 at 16 (Chavez).

2. The LNG alternative is not a more reasonable alternative to the proposed facility because it would provide the same amount of capacity as the proposed facility at about three times the cost of the proposed facility. MGC Ex. 2 at G-18 through G-20 (Application). DPS Ex. 26 at 26 (Chavez).

12. The Alternative Sites Alternatives.

1. The Benson branchline downstream from Little Falls is the most appropriate branchline for construction of the proposed facility. Because the Benson branchline of Northern's system is constrained downstream from Little Falls, Minnegasco cannot reliably provide gas service to any new customers served by that portion of the Benson branchline. No other area of Minnegasco's Northern system faces a similar constraint. Therefore, it is most appropriate that the additional capacity provided by the proposed facility be used to meet the needs of customers located on the constrained part of the Benson branchline. MGC Ex. 2 at G-21 through G-22 (Application); DPS Ex. 26 at 17 (Chavez); DPS Ex. 24 at 16 (Kosowski Dir.).

2. Because the propane air produced by the facility must be mixed in a ratio up to 55/45 with the natural gas in the distribution system, the optimal location of a facility such as the one proposed is at the TBS with the largest potential peak-day load. Additionally, the facility should be located near the TBS closest to the end of the constrained branchline to obtain the maximum displacement of contracted pipeline capacity and increase line pressure at the end of the branchline. While the Brainerd TBS has the largest peak-day load on the Benson branchline, siting the facility there would do very little to alleviate constraints on the Benson branchline downstream of Little Falls. If the Brainerd location was chosen, Northern would still need to construct additional facilities to accommodate any increased gas flow into Alexandria. Therefore, any entitlements freed by locating the proposed facility in Brainerd could not be

reassigned to Alexandria without expanding Northern's system, adding significant additional costs. Downstream of Little Falls, the Alexandria TBS has the largest potential peak-day load. MGC Ex. 2 at G-22 (Application); DPS Ex. 24 at 17 (Kosowski Dir.).

3. Construction of the proposed facility behind the Alexandria TBS is the most appropriate location to maximize the increase in capacity along the Benson branchline downstream of Little Falls. MGC Ex. 2 at G-23 (Application); DPS Ex. 26 at 17 (Chavez).

4. Minnegasco has demonstrated that its proposed location of the storage facility at the Alexandria TBS is reasonable and prudent. MGC Ex. 2 at Tab G (Application); DPS Ex. 24 at 16-17 (Kosowski Dir.); DPS Ex. 25 at 4 (Kosowski Reb.).

13. Alternate Sites at the Alexandria TBS.

1. After selecting the Alexandria TBS as the best TBS location for the proposed facility, Minnegasco turned to selecting a site for the proposed facility. In doing so, Minnegasco considered six criteria:

1. Proximity to the TBS. As discussed previously, the facility should be located near the TBS so that it is near the maximum flow of gas and can make the maximum contribution toward meeting load requirements in the area. In Alexandria, the TBS is located on what has been referred to in the record as Lake Geneva Road. The TBS is located about 1,000 feet north of state Highway 27 on the north side of the former Burlington Northern Railroad right-of-way, which is now a recreational trail. Thus, the proposed facility needs to be in that general area.

2. Proximity to Minnegasco's distribution system. The facility also needs to be located near the local gas distribution system as well so that the propane-air mixture can be injected into the distribution system before it cools down and liquefies. Minnegasco's distribution system in Alexandria starts at the TBS and runs westerly along the old railroad right-of-way. MGC Ex. 15 (Alexandria System Map).

3. Accessibility. The proposed facility must be accessible by the 80,000-pound trucks that will haul the propane to this site. Thus, the site should be close to roadways capable of supporting the large trucks.

4. Size. A 7,000 Mcf/day facility requires approximately three acres. In addition, Minnegasco wanted to provide "a sufficient buffer zone between the plant and its surroundings to minimize the visual impact of the facility." Therefore, Minnegasco sought to find a site of 13 acres or larger.

5. Zoning. The property should be zoned commercial or industrial.

6. Cost. After finding potential sites that met the above criteria, Minnegasco selected the final site on the basis of cost, because that

would ensure that the proposed facility would be the most cost-effective for its customers.

MGC Ex. 2 at G-23-24.

2. Based upon the foregoing criteria, Minnegasco looked for sites on its local distribution system near the Alexandria TBS. It identified four potential sites, as shown on MGC Ex. 2 at Ex. G-11 (Application). They were:

1. The Proposed Site. 16.5 acres located just south and southwest of the TBS and running along the railroad right-of-way, and thus the local distribution system. It is bordered by state Highway 27 on the south and thus requires only minor code upgrades. It was the cheapest site in terms of purchase price, \$60,000, with no preparation costs. Minnegasco chose it for those reasons.

2. Alternative Site No. 1. 22 acres adjacent to the TBS and running west along the northern side of the railroad right-of-way. Being farther from Highway 27, road upgrades would have cost approximately \$50,000 and the purchase price was approximately \$120,000. Because of these higher costs, Minnegasco chose not to pursue Alternate Site No. 1.

3. Alternate Site No. 2. 32 acres located east of Lake Geneva Road between Highway 27 and the old railroad right-of-way. This site contains wetlands in its southern portion and the northern portion is hilly and narrow and inaccessible from the north. Thus, accessibility would have to be improved. Road upgrades of about \$50,000 would also be required. Since the site is located east of the TBS, Minnegasco would need to lay additional pipe, which it estimated would cost approximately \$112,000. Because of these costs, Minnegasco chose not to pursue Alternate Site No. 2.

4. Alternate Site No. 3. Four individual sites located on the corners of the intersection of Hope Street and Liberty Road. Liberty Road runs north and south and is located approximately 2,500 feet east of Lake Geneva Road. Hope Street runs east and west about 1,300 feet north of Highway 27, just on the north edge of the old railroad right-of-way. Homeowners Ex. 23. The sites on the northwest and northeast corners are farmland that the owners were unwilling to sell to Minnegasco. The site on the southwest corner is partially wetland, which is prohibited for development. The site on the southeast corner could be developed, but has some drainage problem that would increase construction costs. In addition, the site is five acres, which was insufficient in Minnegasco's opinion to leave a sufficient buffer from the surrounding area. Also, the purchase price was \$100,000, \$40,000 more than the Proposed Site. It would also require an upgrade to Liberty Road, costing approximately \$80,000 and additional piping to reach the Minnegasco distribution system, costing approximately \$179,000. Because of these additional costs totaling approximately \$299,000, Minnegasco eliminated this site from consideration.

MGC Ex. 2 at G-24-26.

3. The southeast corner of Alternate Site No. 3 is bordered on the south by a farm implement dealership fronting on Highway 27 and on the east and southeast by an auto salvage yard that runs from Highway 27 to the former railroad right-of-way. There is no residential development within 3,000 feet of the site except for one or two farm houses located to the northeast of the intersection. Homeowners Ex. 17, MGC Ex. 2 at G-11, and Administrative Law Judge's observation.

14. Safety and Property Value Comparisons.

1. Evidence in opposition to the Proposed Site was presented by the Homeowners with respect to the safety and diminution of property values. Homeowners Ex. 19 and 20. The Homeowners do not oppose the proposed facility itself, but object only to its proximity to their homes. Tr. 326-27 (Anderson); Tr. 248 (Hill). They suggest that the southeast corner of Alternate Site No. 3 would be a more reasonable or prudent alternative than the Proposed Site because there are few existing homes in the area.

2. The Commission possesses the sole exclusive prerogative in determining whether to issue or deny a Certificate of need, which is binding upon other state agencies and local governments. Minn. Stat. § 216B.243, subd. 7.

3. Safety is not specifically listed among the necessary assessment criteria to which § 216B.243 refers. Minn. Stat. § 216B.243, subd. 3; Minn. R. 7851.0120. The statutory and rule criteria refer primarily to capacity, demand, efficiency and other measures of energy needs and supply. *Id.* Nonetheless, consideration of safety-related issues may be made under the statutory reference to "environmental quality" in Minn. Stat. § 216B.243, subd. 3 (1996), and the rule references to "natural and socioeconomic environments" in Minn. R. 7851.0120 B(3) and (2). The reference to Minn. R. 7851.0120 B(3) is in that portion of the rule requiring parties other than the applicant to demonstrate a more reasonable and prudent alternative considering, among other things, the effects upon the natural and socioeconomic environments. The reference to Minn. R. 7851.0120 C(2) is in that portion of the rule where the burden is upon the applicant to demonstrate that the consequences to society of granting the Certificate of need are more favorable than denying it, considering, among other things, the effects of the proposed facility upon the natural and socioeconomic environments compared to not building the facility.

4. Two rules refer to safety specifically. Minn. R. 7851.0290 requires the applicant to compare its proposal with its own alternatives as to "safety and reliability aspects." Minn. R. 7851.0360 requires the applicant to describe its plan for preventing or minimizing the impact of an explosion or fire.

5. According to DPS, prior Commission decisions in utility matters do not address the extent to which the Commission must consider and determine the safety of a proposed facility. There are several references in telephone cases that utilities must provide "safe and reliable" service, but only a general consideration and finding appear to be given. See, e.g., In the Matter of Three Petitions to Discontinue Service to Access Plus, Dkt. No. P-999/CI-92-1061, P-421/EM-92-999, P-3006/M-92-1032, P-478/EM-92-

1031, Order of Sept. 4, 1992, 1992 WL 677500 (Minn. P.U.C.); In the Matter of a Filing by CLM Associates for a Certificate of Authority to Offer Videotex Gateway Services, Dkt. No. P-3067/NA-91-689, Order of Dec. 4, 1991, 1991 WL 634778 (Minn.P.U.C.); In the Matter of the Application of MinnTelCo L.D.S., Inc. for a Certificate of Authority to Provide Long Distance Service, Dkt. No. P-3014/NA-89-343, Order Oct. 9, 1989, 1989 WL 509962 (Minn.P.U.C.).

6. DPS has identified only one certificate of need proceeding in which safety was specifically addressed. It involved NSP's proposal to build a nuclear waste storage facility at its Prairie Island nuclear power plant. The Commission in that case relied upon the recommendation of the Minnesota Department of Health in ordering additional monitoring of radiation levels. In the Matter of an Application for a Certificate of Need for Construction of an Independent Spent Fuel Storage Installation, Dkt.No. E-002/CN-91-19, Order Modifying Radiation Monitoring Plan, Sept. 9, 1994, 1994 WL 613761, and Order Approving Radiation Monitoring Plan In Part and Requiring Further Filings, Feb. 26, 1993, 1993 WL 732435 (Feb. 26, 1993)(Minn.P.U.C.)("Prairie Island"). Attachments 2 and 3. Specifically, the Commission stated:

The Company considers this level of precision [monitoring] unnecessary, given the inherent safety of the facility and the extreme unlikelihood of any release of radiation. The Commission shares the Company's views on the safety of the facility, but not on how that affects monitoring issues. Even the Company, after all, would not argue that the safety of the facility makes monitoring unnecessary.

The issue, then, is how much monitoring is reasonable, given the degree of risk posed by the facility, the costs of monitoring, and the obligation to maintain public confidence in the facility's safety. The Commission finds that this public interest equation favors installing the PIC monitors.

Id. 1994 Order, WL at 6.

7. The significance of Prairie Island is limited as to Commission requirements regarding safety considerations because federal law preempts state agencies from regulating nuclear safety issues. The Commission's orders were based on its finding that NSP had, in essence, agreed to monitoring or had waived any preemption argument with respect to monitoring. The case does demonstrate the Commission's broad authority to consider and respond to safety issues but it does not quantify the required level of safety review. Prairie Island is instructive in showing that the Commission can rely on the expertise of other state agencies in considering safety of a proposed facility

8. Minnegasco has described its plan for preventing or minimizing the impact of an explosion or fire in detail and has supplemented that information in response to the Homeowners' objections. However, Minnegasco did not compare its proposal with its own alternatives as to safety and reliability as required by Minn. R. 7851.0290. In the evaluation of alternative methods of meeting the need and evaluation of alternative site

locations, Minnegasco considered safety only in terms of the adequacy of the gas supply. It never considered safety in terms of safety of nearby residents and, in particular, never compared its proposed site with its own alternative sites as to public safety. Instead, the company chose potential locations which could all be made to comply with the fire safety code, and then chose the cheapest option available to it. Minnegasco testified as follows:

Q. I think you've been asked this question, but let me ask it again. How was safety used as a factor by Minnegasco in considering alternatives?

A. The safety is governed by the codes, the codes state what is required to have a safe operation and that was what we used as our guide.

Q. So it was not a factor in picking a site?

A. It was from the standpoint that it must meet code, the site and the plant on the site must meet code.

Q. All right. So any site you considered had to be capable of meeting code; is that right?

A. That's correct.

Q. But relative safety between sites that met - were capable of meeting the code was not a consideration?

A. I don't - we did not make a distinction on relative safety. In our opinion the plant is safe.

Tr. 223-224 (Fransdal).

9. DPS and Minnegasco argue that technical in-depth inquiry with respect to safety aspects of the pipeline and storage should be left to the State Fire Marshal's Office of Pipeline Safety (OPS). The OPS is responsible for approval and enforcement regarding compliance with safety codes and standards involving construction, operation, maintenance and emergency response for propane-air peaking facilities. Tr. 142-43 (Wiest). "This includes the training and qualification of the designers, welders, inspectors, operating and maintenance and emergency response personnel." Tr. 143. The OPS reviews such details as tank integrity through scientific testing, the engineering quality of construction materials, the qualifications of welders performing the construction, whether or to what extent remote monitoring of the proposed site satisfies safety standards, and the adequacy of the emergency response plan. Id. The OPS must refuse to allow operation of the proposed facility if its construction, operation or maintenance fails to meet required safety codes. Tr. 305 (Wiest); DPS Ex. 25 at 2-3 (Kosowski). The OPS does not, however, evaluate alternative sites to determine relative safety and did not do so in this case. It evaluates the plans presented to it for a proposed site and works to ensure compliance with appropriate codes and standards, and that it will be as safe as the code will allow it to be. Tr. 149-150 (Wiest).

10. Minnegasco has demonstrated that the propane will be stored in tanks and added to the natural gas in the underground pipelines with relative safety. The risk

of a serious accident at the proposed facility is extremely remote. "[T]he probability of an occurrence of a serious nature is so near to zero that you can hardly differentiate it from zero." Tr. 356-57 (Naeve). The Company's expert described the likelihood of such an accident mathematically as about one chance in 10 million. Id. at 357.

11. Because propane will be hauled to the proposed facility by trucks, there will be an increase in truck traffic en route to, and in the area of, the proposed site. Minnegasco's expert acknowledged a slight decrease in safety at the proposed site, but calculated the decrease to be so slight as to be practically zero. Tr. 367-68 (Naeve). He also testified that the proposal increases safety in the Alexandria community at large by reducing small propane truck traffic to less than two percent of the present level. MGC Ex. 3 at 13-14 (Naeve Reb.); Tr. 344, 367 (Naeve). That comparison only applies if no facility is built; it is irrelevant to a discussion of alternative site locations.

12. The Company's safety record with respect to stored propane and propane-air peaking facilities is unblemished. Minnegasco has over 12 million gallons of propane stored at eight propane plants in the following communities: Anoka, Golden Valley, Burnsville, Mankato, Coon Rapids, and three in Minneapolis. In its 47 years of peak-shaving operations, Minnegasco has never experienced a serious incident requiring reporting to the OPS. Further, a catastrophic failure of a pressurized tank containing liquefied gas has never occurred anywhere in the country at a utility-owned location. DPS Ex. 24 at 22-23 (Kosowski Dir.).

13. The most significant potential harm posed by the proposed facility is the catastrophic failure of a tank known as a BLEVE (Boiling Liquid Expanding Vapor Explosion), causing heat radiation and shrapnel. In a facility the size of the proposed facility, heat radiation from the tanks may burn skin up to 1,200 feet away and shrapnel may travel several hundred feet. Minnegasco Response to Information Request DPS-24 in Homeowners Ex. 19.

14. The proposed facility is designed to minimize conditions that could cause an explosion. In order for a propane tank to explode or "BLEVE", three conditions must exist at once: there must be an unintended release of propane, together with an ignition source close enough to ignite the vapors, and the tank wall must be significantly weakened. MGC Ex. 3 at 8-9 (Naeve Reb.). The proposed facility is designed to detect any unintended gas leaks. It will include gas, flame and smoke detectors. The only ignition source in the vicinity of propane storage or piping is the truck unloading area. Id. at 10-11; Tr. 349, 362 (Naeve). Again, the truck unloading area is specifically designed for safe unloading. See id.

15. With respect to tank integrity, the tanks are built to withstand the internal pressure caused by an outside temperature of up to 600 degrees Fahrenheit. Tr. 353 (Naeve). Thus, even on a hot summer day internal tank pressure is well below the tanks' maximum pressure capacity. Id. at 355. The tanks also will be stationary, further diminishing the likelihood of ignition. Id. at 343.

16. Another theoretical threat to tank integrity is internal or external corrosion. However, the tanks themselves are not likely to have experienced internal corrosion because they have been in constant use for propane storage since their manufacture

and, in any event, they will be visually and scientifically tested under the supervision of the Office of Pipeline Safety prior to approval of that agency for use at the proposed facility. Tr. 146, 296-99 (Wiest); MGC Ex. 3 at 5-6 (Naeve Reb.). The risks of corrosion of the tanks in the future is minimal given their above-ground placement at the proposed facility and due to required maintenance such as painting to prevent the tanks from atmospheric corrosive forces. See id. With the exception of the tanks, all construction materials for the proposed facility will be new. Tr. 147-48 (Wiest).

17. The Homeowners identified a number of propane tank explosions, but none occurred at a regulated utility-run operation. Homeowners Ex. 19. According to Minnegasco, the design, construction, operation and maintenance of utility-run plants and, specifically, the proposed facility, so reduce the likelihood of accidents that a safety comparison to unsecured, private propane use is not particularly relevant for the purposes of this proceeding. The proposed facility will be surrounded by a high fence topped with three strands of barbed wire, and will include motion detectors and security cameras. MGC Ex. 4 at 10-11 (Fransdal). The Company will also install thirteen gas detectors, eight ultraviolet/infrared flame detectors and two smoke detectors. MGC Ex. 3 at 8 (Naeve Reb.). These detectors will be part of an emergency shutdown system that will minimize the potential for the unintended release of propane. MGC Ex. 4 at 10-11 (Fransdal).

18. Although the southeast corner of Alternative Site 3 is about 3,000 feet farther from any significant number of homes, Minnegasco's safety expert testified that there is no practical enhancement of safety relative to the Proposed Site. Tr. 356-59 (Naeve). Erroneously assuming the closest home to be 1,200 feet from the tanks, he estimated the likelihood of a BLEVE affecting the homes in the subdivision at one in 10 billion. He estimated the likelihood of harm at Alternative Site No. 3 as 1,000 times less. While that mathematical improvement in safety exists at that alternative site, he felt that the likelihood of harm to nearby residents was so close to zero at both sites that there was no practical difference. Id. at 358-59, 367-68.

19. Locating the proposed facility at the Proposed Site poses a small risk to nearby residents in terms of an explosion ever happening. That number has been put at one in 10 million by Minnegasco's expert and there is little reason to argue with it. The real problem is that if there is an explosion, there will be a large area of devastation. Burns of humans, and homes, up to 1,200 feet can be expected. Several of the nearby homes are within 1,200 feet of the proposed location of the tanks at the Proposed Site, contrary to the assumptions of Minnegasco's expert. Thus, even though the likelihood of injury is small, the potential impact of any injury is large. At the southeast corner of Alternative Site 3, the distance to any significant number of residences is at least 3,000 feet, so the potential injury to residences is much less by a factor greater than the 1,000 times suggested by Minnegasco's expert.

20. Building of the proposed facility at the Proposed Site would decrease the value of the nearby homes. Amy Townsdin and Brad Anderson testified that they expected their property values to drop by at least 10 percent because of the safety and truck traffic factors and that if the average home value of \$150,000 for the existing 60

homes in the area declines by 10 percent, that is a loss of \$900,000. Homeowners Ex. 19 at 43. Mr. Anderson testified at the hearing:

Common sense tells me that money that my family will lose by selling our home and moving is not worth taking a chance with living in our house next door to the facility with the potential to fail at any time. We will move.

Tr. 328. The Homeowners' fear is not irrational. They have studied the issue in great depth and appreciate the fact that while the likelihood of an explosion is small, the potential harm is great. If Mr. Anderson moves, he will be willing to accept a lower price than he otherwise would. Many new buyers will have the same fear of the facility and will be willing to offer less money for the house. Property owners are presumed to know the value of their property and are allowed to testify as to its value. See, for example, State v. Schoberg, 155 N.W.2d 750 (1968).

21. Minnegasco witness Fransdal testified that Minnegasco did no review to determine the impact of the facility on the value of nearby houses and that he had no history or basis for making a judgment on the impact. Tr. 97. He was only able to suggest that propane-air facilities have not depressed values because people end up building homes close to the facilities. Tr. 201 (Fransdal). But that may be because the prices are lower.

22. The DPS's investigation, including a site visit, found that the visual impact of the proposal at the proposed site will create very little visual obstruction. DPS Ex. 24 at 24 (Kosowski Dir.). The proposed site allows significant visual buffer areas between the facility and surrounding properties. The facility will require only about 3 acres of the 16.5 acre proposed site. A slight hill and trees will shield the view of the facility from the South, a forested area exists to the North that is between the facility and most of the Homeowners' properties, and the Company will plant additional trees to diminish the view from the West. DPS Ex. 24 at 24 (Kosowski Dir.). The proposed facility will be seen from the East due to the proposed driveway access. No residences exist immediately to the East of the proposed site. MGC Ex. 2 at G-11 (Application).

23. It is impossible to put a precise number on the decrease in the value of nearby homes that would be caused by the construction of the proposed facility at the Proposed Site. While many of the Homeowners and potential buyers would find the safety and other factors a large detriment, others might find the proposed facility visually attractive when compared to some of the businesses nearby on Highway 27. There was no evidence on the impact of the proposed facility, if located on the southeast corner of Alternative Site No. 3, on the property values of surrounding properties, but obviously the economic impact on farmland, an auto salvage yard, and an implement dealer would be substantially less than the impact on up to 60 homes. Moreover, there would be far less need for a visual buffer at such a location.

24. Based upon the evidence presented by the Homeowners and upon the failure of Minnegasco to provide comparative safety data for its alternatives as required by Minn. R. 7851.0290, it is found that the Homeowners have demonstrated that the southeast corner of Alternative Site No. 3 is a more reasonable or prudent site than the Proposed Site. Minnegasco eliminated that site from consideration because there was

another site available that met all code and other requirements at a lower cost. Tr. 195 (Fransdal). The statute and rules require more than just a comparison of the costs of construction and operation.

The Consequences To Society Of Granting The Certificate of Need.

25. There are many benefits to society of building a propane-air peak shaving facility near the Alexandria TBS. DPS Ex. 24 at 29-30 (Kosowski Dir.).

26. Approval of such a facility will have a positive effect on overall state energy needs. The benefits of approval include providing additional reliable capacity for Minnegasco customers on the Benson branchline downstream of Little Falls at the lowest possible cost, providing additional capacity to other Minnegasco customers in Minnesota, expanding the choice of natural gas service to Minnesota residents who have not previously had such service and creating a more efficient allocation of energy resources by increasing competition in the alternative fuel market. DPS Ex. 26 at 29 (Chavez); DPS Ex. 24 at 27, 29-30 (Kosowski Dir.).

27. Several members of the public stated at the public hearing that they did, want natural gas as an energy option. Tr. 152, 155 and 162.

28. The conditional use permit issued by the Douglas County Board of Commissions to allow Minnegasco to use the proposed site for its peaking facility, states that the peak shaving plant is needed for growth in the greater Alexandria area and Douglas County. DPS Ex. 24 at 27 (Kosowski Dir.).

29. Several members of the public stated at the public hearing that the proposed facility would induce development in the Alexandria area. Tr. 154,157, 161, 164, 167-169, 180 and 226-228.

30. A benefit to society from the output of the proposed facility includes the provision of a reliable and cost-effective peaking energy supply for Minnesota. DPS Ex. 26 at 29 (Chavez); DPS Ex. 24 at 26-27 (Kosowski Dir.).

31. A benefit to society from the output of the proposed facility will be the increased consumer choice of energy alternatives, thereby supporting competition and promoting efficiency in the market. DPS Ex. 26 at 28-29 (Chavez); DPS Ex. 24 at 27 (Kosowski Dir.).

32. A benefit to society from the output of the proposed facility will be that new customers in the Alexandria area will have the option of choosing natural gas as an energy alternative. Natural gas has less environmental costs associated with its use than do alternative fossil fuels. DPS Ex. 24 at 27 (Kosowski Dir.).

33. A benefit to society from the output of the proposed facility will be enhanced growth and development of the area. DPS Ex. 24 at 27 (Kosowski Dir.).

34. While the proposed facility near the Alexandria TBS would be a benefit to society, the consequences of granting the certificate of need for the proposed facility at the Proposed Site are not more favorable than denying it because of the negative

impacts of that site, as discussed above, as compared to other sites near the Alexandria TBS.

No Showing Of Non-Compliance With Other Government Entities.

35. Minnegasco filed an EAW concurrently with the filing of its Application for a certificate of need. A copy of Minnegasco's EAW was included in its Application as well. MGC Ex. 2 at Ex. K-2. A copy of the MPCA staff recommendations and Proposed Findings was submitted at the hearing. MGC Ex. 6.^[3] On March 26, 1996, the Minnesota Pollution Control Agency (MPCA), the responsible governmental unit for the EAW per MEQB rules, found that the EAW was sufficient to meet its requirements and that an environmental impact statement was not necessary. Ex. 30 (MPCA Notice). The MPCA found that the facility "does not have the potential for significant environmental effects." Id.

36. There has been no showing, on the record, that the design, construction or operation of the proposed facility will fail to comply with the relevant regulations or requirements of other government entities.

Based on the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Minnesota Public Utilities Commission and the Administrative Law Judge duly acquired and have jurisdiction over this matter.
2. All relevant substantive and procedural requirements of law and rule have been fulfilled.
3. The Application substantially conforms to the requirements of all applicable statutes and rules, as interpreted by orders of the Commission, except that Minnegasco failed to provide information on the safety and economic impact effects of the possible alternatives as required by Minn. R. 7851.0290.
4. The record in this matter demonstrates that the probable result of denying Minnegasco's certificate of need will adversely affect the future adequacy, reliability, and efficiency in the supply of natural gas to Minnegasco's customers and to the people of Minnesota.
5. A more reasonable and prudent alternative to constructing the proposed facility was not demonstrated by a preponderance of the evidence on the record, but a more reasonable and prudent alternative to the Proposed Site of the proposed facility was demonstrated on the record.
6. The consequences to society of granting the certificate of need for the proposed facility at the Proposed Site are not more favorable than the consequences of denying the certificate.
7. It has not been demonstrated on the record that the design, construction, or operation of the proposed facility will fail to comply with relevant policies, rules, and regulations of other state, federal and local governments.

8. The Commission should deny Minnegasco a certificate of need for the proposed facility at the Proposed Site at this time and require Minnegasco to fully evaluate alternative sites at the Alexandria TBS as to safety and economic impact effects.

THIS REPORT IS NOT AN ORDER AND NO AUTHORITY IS GRANTED HEREIN. THE PUBLIC UTILITIES COMMISSION WILL ISSUE THE ORDER OF AUTHORITY WHICH MAY ADOPT OR DIFFER FROM THE FOLLOWING RECOMMENDATIONS.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

The Administrative Law Judge respectfully recommends that the Commission deny a certificate of need to Minnegasco for the proposed facility at the Proposed Site at this time, but allow Minnegasco to further evaluate alternative sites at the Alexandria TBS and submit additional evidence at a reconvened hearing.

Dated this 4th day of June, 1996.

STEVE M. MIHALCHICK
Administrative Law Judge

Reported: Transcript,
Janet Shaddix Elling
Shaddix & Associates
Two Volumes

NOTICE

Under to Minn. Stat. §14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

MEMORANDUM

One of the consequences of economic development is that the citizens have to accept some risks. Minnegasco and DPS have presented evidence and argument that the proposed facility is safe, which to them means that it is extremely unlikely that there will be a significant incident at the proposed facility. Moreover, they argue that whatever risk there is is outweighed by the advantages of providing natural gas to more customers from Little Falls to Benson. Thus, they argue, Minnegasco is entitled to locate the proposed facility at the cheapest available location.

However, the certificate of need process is the only process that requires the examination of alternatives, not only in terms of energy needs and costs, but also in terms of the effects upon natural and socioeconomic environments and social benefit.

Minn. R. 7851.0120. No other agency or political subdivision considers alternatives; they merely approve or disapprove any proposal presented to them. The Office of Pipeline Safety makes sure that the facility complies with fire safety codes, but never gets involved in evaluating alternative sites. Likewise with the County Board and the Minnesota Pollution Control Agency. Thus, DPS's argument that the Commission should defer to the Office of Pipeline Safety on detailed safety issues should be rejected. The certificate of need statute and rules require the applicant to consider alternatives and also require the Commission to ensure that the alternatives have been appropriately considered. The Office of Pipeline Safety has little to add on that analysis.

Minnegasco suggests that all it need do is ensure compliance with safety codes, then select a site purely on the basis of cost. And that is what Minnegasco did. It quickly dismissed Alternative Site No. 3, including the southeast corner there, and did not gather sufficient facts for itself or for the Commission to make a valid comparison of all the impacts required to be considered by the rules. Simply looking at the aerial view of the proposed sites, Minnegasco Ex. 2 at Ex. G-11, and imagining a 1,200 foot ring around the Proposed Site, provides quick confirmation that the Homeowners' evidence was credible. If Minnegasco's interpretation is correct, it can site a facility anywhere that meets minimum standards without comparing the relative impact of alternatives. Minnegasco's interpretation would render significant portions of the certificate of need rules meaningless. These are the portions of the rules that require an evaluation of impacts beyond simple cost.

The recommendation for denial at this time envisions that the existing proceeding would remain open, but that Minnegasco would prepare an analysis of the safety and economic impact of alternative sites near the Alexandria TBS. The hearing would be reconvened and the existing record would be supplemented with evidence only on these issues.

S.M.M.

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION

In the Matter of the Application of
Minnegasco for a Certificate of Need for
a Large Liquefied Gas Storage Facility

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^[1] Actually, the name of the road appears to be East Lake Geneva Road. Homeowners Ex. 23.

^[2] On October 31, 1995, the Seventh District Court in Douglas County dismissed an appeal by Homeowners of the County Board's grant of the conditional use permit. The dismissal was based on jurisdictional grounds. On January 16, 1996, Homeowners appealed the dismissal to the Minnesota Court of Appeals where that appeal is still pending. On March 26, 1996, the Court of Appeals, in a case virtually identical to the Homeowners' appeal, reversed a district court dismissal of another challenge to a conditional use permit issued by Douglas County for lack of subject matter jurisdiction. Toby's of Alexandria, Inc. v. County of Douglas, 545 N.W.2d 54 (Minn. App. 1996). The attorneys for the appellants in that case are the attorneys for Homeowners in this case. If the panel hearing the Homeowners appeal reaches the same decision as the panel hearing Toby's, it can be expected that the matter will be remanded for trial before the district court for a decision on the merits of the Homeowners' challenge to the County Board's approval of the conditional use permit.

^[3] Exhibit 6 received at the hearing was not a copy of the complete MPCA EAW proposed findings as intended. A corrected copy was substituted May 30, 1996.
